

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BRADY MCGRUDER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

Case No. 17-cv-00649-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on petitioner Brady McGruder's Motion to Vacate, Set aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). The Government has not filed a response and the time for doing so has not expired. However, the Court does not require a response. For the following reasons, the Court denies Mr. McGruder's motion.

1. Background.

On June 1, 2009, Petitioner pleaded guilty to one count of conspiracy to distribute heroin and three counts of distribution of heroin pursuant to a plea agreement. *See United States v. McGruder*, Case No. 08-cr-30254 (Doc. 78). Mr. McGruder was sentenced on September 1, 2009, to the custody of the Bureau of Prisons for 365 months; three years supervised release; a \$300 special assessment; and a \$300 fine. (Doc. 118, 08-cr-30254). Mr. McGruder was determined to be a career offender under the meaning of U.S.S.G. § 4B1.1¹. However, he was sentenced under U.S.D.G. 2D1.1 as offense level was higher. (Doc. 98, 08-cr-30254). Pursuant to the plea agreement, Mr. McGruder did not appeal his conviction or sentence.

¹ 2008 Guideline Manual.

2. Standard.

The Court must grant a § 2255 motion when a defendant's "sentence was imposed in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255. However, "[h]abeas corpus relief under 28 U.S.C. § 2255 is reserved for extraordinary situations." *Prewitt v. United States*, 83 F.3d 812, 816 (7th Cir. 1996). "Relief under § 2255 is available only for errors of constitutional or jurisdictional magnitude, or where the error represents a fundamental defect which inherently results in a complete miscarriage of justice." *Kelly v. United States*, 29 F.3d 1107, 1112 (7th Cir. 1994) (quotations omitted). It is proper to deny a § 2255 motion without an evidentiary hearing if, "the motion and the files and records of the case conclusively demonstrate that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b); *see Sandoval v. United States*, 574 F.3d 847, 850 (7th Cir. 2009). No hearing is required in this matter.

3. Analysis.

Petitioner filed his § 2255 on June 22, 2017, arguing that his prior convictions should not have qualified him as a career offender based on the recent Supreme Court decision in *Mathis v. United States*, 136 S.Ct. 2243 (2016). Such an argument is moot. As stated earlier, Mr. McGruder was sentenced under U.S.S.G. § 2D1.1 and not under the career offender guidelines of U.S.S.G. § 4B1.1. Even if he could prevail under *Mathis*, his sentence range (at the time sentence was imposed) would remain the same under U.S.S.G. § 2D1.1. As such, Mr. McGruder is not entitled to receive any relief pursuant to *Mathis* or any other argument presented as it relates to the career offender enhancement.

4. Certificate of Appealability.

Having denied Mr. McGruder's motion, the Court must grant or deny a certificate of appealability. *See* Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United

States District Courts; 28 U.S.C. § 2253(c). Section 2253(c)(2) provides that a certificate of appealability may issue only if a petitioner has made a substantial showing of the denial of a constitutional right. Mr. McGruder has made no such showing. Therefore, the Court denies a certificate of appealability. Pursuant to Rule 11(a), Mr. McGruder may not appeal the denial of a certificate of appealability, but he may seek a certificate from the Court of Appeals for the Seventh Circuit.

5. Conclusion.

Petitioner Brady McGruder's Motion to Vacate, Set aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1) is **DENIED**. This case is **DISMISSED** and the Court **DIRECTS** the Clerk of Court to enter judgment accordingly. The Court further **DENIES** a certificate of appealability.

IT IS SO ORDERED.

DATED: 6/26/2017

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE